

ADEPT Legal Commentaries

November 2002

Parliament Activity Review November 4-8, 2002

November 13, 2002

Parliament was very productive during the said period, it examined and adopted several legal acts, some of major importance for the society at large.

Legal acts adopted in the final reading

I. Law on the Notary.

ADEPT comment: As compared to the current law and the draft law developed by the Government, the Law adopted by the Parliament brings such novelty as:

- a. state notary institution;
- b. abolishing the assistant notary position;
- c. licensing of the notary activity;
- d. abolishing Notary Union monopoly and its abusive rights;
- e. exemptions and discounts for the notary services provided to socially vulnerable strata of the society;
- f. establishing a ceiling of the extra charges levied by the notary, according to a methodology approved by the Parliament;
- g. abolishing judiciary tax;
- h. abolishing Notary Chambers and their rights, etc.

Given the fact that the notary activity has been a controversial subject since the adoption of this law, it would be interesting to follow on how the law shall be enforced and on its impact on the notary in general, and public money in particular. Also it would be interesting how authorities would establish the state notary institution, given the bureaucracy and corruption associated with that position 4-5 years ago.

After adopting the Law on Notary the Parliament amended the Fiscal Code. Under the amendments notary services are no longer considered entrepreneurial activities and only private notary shall be subject to taxation.

II. Law on compensating the difference between the tariffs on energy and natural gas for the residents to the left of Dniester river.

ADEPT comment: The law provides that until the elimination of the consequences of the Transdnistrian conflict for the residents of Cocieri, Pirita, Cosnita, Dorotskaia and Molovata Noua villages, they would receive a compensation for the difference between the tariffs on energy and natural gas approved by the National Agency for Energy Regulation and those approved by the Tiraspol administration in the limits (energy - 60 kwh per month; natural gas - 8 m³ per month).

III. Laws on ratification of international acts.

ADEPT comment: The Parliament ratified the following:

1. **Addendum to the Agreement between the Government of Romania and Government of the Republic of Moldova on the long-term loan, signed in 1993 and amended in 2000.**

Under the Addendum, Republic of Moldova debts worth 3 million USD were converted as Romania's payment to Moldovan telecommunication companies relaying Romanian 1 TV Channel.

By ratifying the Agreement on the eve of the protest rallies demanding the relay of the Romanian TV Channel to be resumed, the Parliament probably intended to thwart the protests. At the same time it may well happen that the relay of the Romanian TV station wouldn't be resumed, for various technical reasons, which are so easy to find.

2. **European Agreement on remitting the dead bodies.** Under the agreement the formalities for remitting the bodies were greatly simplified for the state members to the Agreement. Currently, besides numerous tiresome formalities transportation of a body into the country costs from 3,000 to 5,000 Euro.
 3. **Convention between the Government of the Republic of Moldova and Government of Canada on avoiding double taxation and preventing fiscal evasions.**
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IV. Law on modification of legal acts related to Prosecution.

ADEPT comment: Under the law, an Anti-Corruption Department shall be established within the Prosecution of the Republic of Moldova. One of the Departments' main functions would be overseeing how the Center for Fighting Corruption and Economic Crime observes the legal framework.

Legislative acts adopted in the first reading (not final)

I. Draft law on migration.

ADEPT comment: Under the new law a Migration Department shall be established within the Government to oversee the migration flow. In addition the Department shall design a single recording and monitoring system of the refugees stationed on the territory of the Republic of Moldova.

II. Draft law on normative acts issued by the Government and other local and central public bodies.

ADEPT comment: The draft law is aimed to ensure a better quality and efficiency of the acts issued by the Government, central and local public administration bodies. Normative act is defined as a legal act providing binding rules to be repeatedly applied to an undetermined number of identical situations.

The elaboration of such a draft was determined by the Law on Legal Acts, providing that the Government should define its own rules of issuing normative acts.

III. Law on modifying Article 4 of the Law on State Tax.

ADEPT comment: Under the draft, central public administration bodies shall be exempted of the obligation to pay the state tax when defending in court state patrimonial interests. There are many controversial opinions on the draft, however experience of many countries proved that the mechanism works. Nevertheless, it does not exclude abuse of power by public administration officers.

Parliament Activity Review November 11-15, 2002

November 18, 2002

During the said period the Parliament examined several important pieces of legislation.

Legal acts adopted in final reading

I. Law on distribution of copies of literary works and phonograms.

ADEPT comment: A significant modification was operated to the draft law since its adoption [in the first reading](#), namely the number of control signs to be ordered by the Parliament was increased from 500,000 to 1000,000,000 given the high number of turnover. It remains to be seen if the Moldovan distributors would comply with the imposed regulations.

II. Law on measures to be undertaken to improve economic and financial situation of the zoo-technical enterprises.

ADEPT comment: Under the law the debts payable by the zoo-technical enterprises for the credits taken, as well as debts payable to the state budget shall be frozen for a 5 year period. In addition, it was decided to cancel the penalties and fines accrued for the failure to pay the debts to the state budget. Furthermore the Parliament decided to exempt the said enterprises from all the payments due to the state budget for a 3-year term. A total of 30 enterprises would benefit of the said exemptions.

The Parliament recommended local public administration bodies to freeze the debts (taxes due to the local budgets) of the said enterprises, based on bilateral contracts to be concluded. Deputies decided to support enterprises, whose activity was halted, and whose poor economic and financial situation is due to poor management and inconsistency of the reforms in the field.

III. Law on modification of the Land Code.

ADEPT comment: Under the modifications, agricultural plots reserved for the social development of the rural localities shall be transferred into the private property of the "families in which neither of the members received a land plot". The phrase was modified in such a manner as to allow only one member of the family to receive the plots. The modification was aimed to solve the problem with the families that received several plots, latter on difficult to withdraw.

IV. Law on modification and completion of the Telecommunication Law.

ADEPT comment: The President refused to promulgate the law and recommended liberalizing IP telephony services. Consequently, the Parliament ruled to preserve Moldtelecom monopoly on providing domestic and international call services, except for IP telephony, until December 31, 2003.

The law puts an end on the controversial state monopoly on IP telephony services. International financial organizations also lobbied for the liberalization of the said services. Furthermore they set liberalization as one of the conditions to be met by the Moldovan authorities for receiving the next tranches of the credit.

V. Law on the state budget for 2003.

ADEPT comment: The Parliament examined the most important financial law during a record period. The usual legislative forum debates, which used to accompany the adoption of the law, this time have been transferred to the special commission assigned to finalize the law, including among others opposition and independent deputies.

The Parliament didn't significantly change the original draft. Although declared to be socially oriented, a significant increase of allocations to the Forces Ministries was registered.

Legal acts adopted in the first reading or rejected

I. Law on modification of the Law on Political Parties and Other Socio-Political Organizations

ADEPT comment: The said draft law was developed and submitted by the Christian-Democratic Peoples' Party. It envisages the increase of the minimum number of party members required for the party registration from 5,000 to 15,000 members. Furthermore, under the draft law all political parties shall get re-registered within 3 months of the enforcement of the law.

There were controversial opinions on the law, some opposition and majority faction deputies stated that it would breach constitutional provision and democratic principles. However they brought no concrete arguments in favor of their position.

Some deputies pointed that Christian-Democrats and Communists were trying to monopolize political spectrum and hinder the appearance of new players. It seems that they are right given the recent increase in the threshold of representation and intended increase of the minimum party members.

It remains to be seen whether the draft law would be further modified or whether Council of Europe would be satisfied with its adoption.

II. The Parliament rejected the draft law on access to environmental information.

ADEPT comment: The draft law was submitted back in 1996. Ilia Trombitski Chairperson of "Biotica" NGO developed it. The Parliament rejected the draft on the grounds that a similar law, namely Law on Access to Information was passed in 2000. If necessary, the Parliament would later on include a separate chapter on access to environmental information in the Law on Access to Information.

Parliament Activity Review November 18-22, 2002

November 25, 2002

Legal acts adopted in the final reading

During the said period the Parliament examined several legal acts pertaining to the electoral promises made by the Communist Party, namely amending the Constitution in view of allowing double citizenship; revising the retirement age and indemnification of the deposits at the Savings Bank.

I. Law on modification of the Constitution of the Republic of Moldova

ADEPT comment: As already reported, the modification provides for:

1. **Allowing double citizenship.**

This legalizes the status of Republic of Moldova citizens who hold double citizenship (according to some estimates there are 600,000 - 800,000 such citizens). Noteworthy, upon the adoption of the law, Romanian Government issued an ordinance suspending the award of Romanian citizenship to citizens of another countries.

2. **Allowing deputies to hold other remunerated positions.**

The Parliament ruled that the MP position is incompatible with any other remunerated position, except for didactic and scientific activity. Initially, it was suggested that artistic activity should be allowed as well, and that those activities should be carried out after the working hours.

Noteworthy, initially it was envisaged to lift deputies' immunity, however the idea was abandoned in the final reading. This change was determined not by deputies' interest to adjust RM laws to international standards and principles, but rather by their interest in preserving certain privileges. Right from the beginning some deputies warned that if adopted, the amendment would allow any policemen to arrest a MP.

3. **Reform of the judiciary system.**

a. **appointing judges**

Initially it was suggested that judges to be appointed by the Parliament "so as to ensure an increased transparency and objectivity", however in the end deputies decided to leave the appointment of judges in the exclusive competence of the President, so as to ensure a rapid and easy procedure of appointing judges. Another recommendation not taken into account was opposition's request to oblige the President to appoint a certain judge, if the latter was repeatedly nominated by the Supreme Magistracy Council. The recommendation was rejected on the grounds that the President should be independent in exercising his functions.

b. **reducing the hierarchy of the courts of justice**

The Parliament decided to abolish the tribunals and establish a three-layer hierarchy of the courts of justice. Opposition criticized the amendment on the grounds that it would be more difficult to establish the truth if one of the methods of appealing court resolutions is cancelled. However majority faction argued that it is necessary to simplify the judiciary system. It is worth mentioning that the legislature also ruled that judges working in the abolished tribunals should be employed in the existing or newly established courts.

c. **changing the structure of the Magistracy Supreme Council**

Under the amendment, Magistracy Supreme Council shall be formed out of magistrates and titular professors, whereas the Chair of the Economic Court and Chair of the Court of Appeal

shall be excluded. Another modification refers to the appointment of the Magistracy Supreme Council by the Parliament (via an organic law).

II. Law on modification of the Law on Retirement.

ADEPT comment: The legislature's members decided to stop for five years the progressive increase of the retirement age. Under the law, commencing January 1, 2003 men would retire at 62 and women at 57. Majority faction claims that by amending the law they had fulfilled one of their electoral promises.

III. Law on modification of the Status of Chisinau Municipality.

ADEPT comment: Under the law, Chisinau Mayor is excluded from the Government. Several reasons for the said modification were cited: observing Constitutional provisions; equal rights to all local public administration bodies; etc. Needless to say last week the Government endorsed the amendment, despite the fact that several months earlier it refused to do so and provided a lot of arguments in favor of their position.

IV. Law on military liability for damage.

ADEPT comment: The law provides military's liability for the damages incurred to the military unit patrimony, as well as procedure for recovering the damages.

V. Law on modification of the Law on the State Tax.

ADEPT comment: Under the law central public administration bodies, Court of Accounts and its territorial structures funded from the state budget shall be exempted from the state tax in cases the latter defend in court the state patrimonial interests.

Other legal acts adopted in the first reading (not final)

I. Draft law on indemnification of the deposits of the citizens of the Republic of Moldova in the Savings Banks.

ADEPT comment: The adoption of the law was part of the Communists' electoral program. The draft includes the following provisions:

- a. state's obligation with regard to the citizens having deposits at the Savings Bank;
- b. deposits shall be indemnified according to the situation as of January 2, 1992: under a 1:1 ratio for the first 1,000 rubles, and 2:1 ratio for the rest of deposited amount;
- c. law shall be enforced within the next 20 years;
- d. entrusting the Government to establish the procedure of indemnifying and repaying the deposits.

According to some preliminary estimates, the amount due to the population is 1,5 - 1,7 billion Lei. The Law on State Budget for Year 2003 provides an amount of 43 million. If the law is enforced, Republic of Moldova would be the first CIS country to repay the deposits. Opposition claims by adopting the law Communists hope to secure better results in the upcoming local elections.

II. Draft law on state social insurance budget for year 2003.

ADEPT comment: The draft provides for revenues of 2,229,066.7 thousand Lei and the same amount of expenditures. A 394 thousand increase registered as compared to this year. The amount would cover the expenditures for stopping the retirement census and establishment of a reserve fund of 100 million lei.

III. Draft law on canceling penalties of enterprises, which paid the debts to the obligatory state social insurance fund by April 1, 2002.

ADEPT comment: The law cancels the penalties due by 90 enterprises, which managed to repay the debts worth 10 million lei. The penalties are worth 6 million lei. It seems that such kinds of laws are very efficient in levying taxes due to the social security budget.

IV. Draft law on modification and completion of the Law on Petroleum Market.

ADEPT comment: Under the amendments an automated petroleum recording system shall be established. Another modification annuls importers' obligation to mark the petroleum upon its import in the Republic of Moldova. Previously it was thought that marking petroleum products would end the smuggling.

Parliament Activity Review November 25-29, 2002

December 2, 2002

Legal acts adopted in the final reading

I. Law on Humanitarian Aid.

ADEPT comment: The law regulates the storage, distribution and recording of the humanitarian aid provided to the Republic of Moldova. The law defines the notions of humanitarian aid, donor and beneficiary of humanitarian aid, etc.

Under the law a central body shall be established to administer and coordinate humanitarian aid, which in its turn shall be subordinated to the Interdepartmental Commission on Humanitarian Aid.

The donors could be foreign states, religious, philanthropic and cultural organizations, Red Cross as well as foreign citizens. The following may receive humanitarian aid: distributors of the humanitarian aid, registered public associations and foundations, philanthropic organizations, Moldovan Red Cross, religious organizations registered in compliance with the Law on Cults, state funded organizations and institutions. A specialized Agency could also receive the humanitarian aid in cases when it is intended for the state or to no concrete beneficiaries.

The law also provides the beneficiaries of the humanitarian aid: single pensioners, disabled, orphan and abandoned children, families with more than three children, unemployed, incomplete families, disabled and ill persons, as various other legal entities (medical institutions, orphanages, asylums, blind or deaf associations, etc).

The following goods may be considered humanitarian aid: food, industrial products, medication and medical equipment, and other first aid goods. The law also stipulates which goods may not be brought into the country as humanitarian aid.

The law also regulates the receipt of humanitarian aid, its storage, distribution and recording as well as the liability for violating the law.

II. Law on ratification of the Protocol to NIS Agreement on state tax for economic litigation.

ADEPT comment: Under the Protocol, member states agree on a new quota ranging from 300 to 13,000 rubles for the economic litigation.

III. Resolution on overseeing the enforcement on the Law on Petitioning.

ADEPT comment: Under the resolution, the Parliament requests the Government to take measures and eliminate the flaws found out during the undertaken control. Also the Government is to develop and submit to Parliament a draft law aimed to improve the Law on Petitioning.

Noteworthy, the discussions avoided the recent amendments operated by the Parliament, providing that anonymous petitions should be examined as well. Previously several MPs contested the amendments as being anti-democratic.

Legal acts adopted in the first reading (not final)

I. Draft law on completing the legal acts in the field of forestry.

ADEPT comment: The said modifications are aimed to toughen the circulation and exports of wood products from the Republic of Moldova. In particular it is recommended to introduce sanctions in the Code of Offense for the export of wood products without documents certifying their origin.

Although several deputies pointed the poor quality of the law and loosely defined notions, the draft was adopted in the first reading and is to be perfected until the next reading.